

REFERENCE TITLE: *burden of proof; emergency treatment*

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SB 1351

Introduced by

Senators Allen, Arzberger, Bennett, Huppenthal, Tibshraeny;
Representatives Quelland, Reagan, Weiers J: Senators Cheuvront, Gray

AN ACT

AMENDING TITLE 12, CHAPTER 5.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-572; TRANSFERRING AND RENUMBERING SECTION 32-1473, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 12, CHAPTER 5.1, ARTICLE 1, ARIZONA REVISED STATUTES, AS SECTION 12-573; AMENDING SECTION 12-573, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; RELATING TO HEALTH CARE ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:
Section 1. Title 12, chapter 5.1, article 1, Arizona Revised Statutes,
is amended by adding section 12-572, to read:

12-572. Burden of proof for treatment in emergency departments or rendered by on-call providers; definition

A. UNLESS THE ELEMENTS OF PROOF CONTAINED IN SECTION 12-563 ARE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE, A HEALTH PROFESSIONAL AS DEFINED IN SECTION 32-3201 WHO PROVIDES OR WHO IS CONSULTED TO PROVIDE EMERGENCY SERVICES TO A PATIENT WHO IS REGISTERED WITH OR ADMITTED THROUGH THE EMERGENCY DEPARTMENT OF A LICENSED HOSPITAL IS NOT LIABLE FOR ANY CIVIL OR OTHER DAMAGES AS A RESULT OF ANY ACT OR OMISSION.

B. UNLESS THE ELEMENTS OF PROOF CONTAINED IN SECTION 12-563 ARE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE REGARDING THE ACTS OR OMISSIONS OF A LICENSED HOSPITAL OR ITS AGENTS AND EMPLOYEES IN CASES THAT ARE COVERED BY SUBSECTION A OF THIS SECTION, THE HOSPITAL IS NOT LIABLE FOR ANY CIVIL OR OTHER DAMAGES AS A RESULT OF ANY ACT OR OMISSION.

C. FOR THE PURPOSES OF THIS SECTION, "EMERGENCY SERVICES" MEANS ANY OF THE FOLLOWING:

1. SERVICES THAT ARE REQUIRED BY THE EMERGENCY MEDICAL AND LABOR ACT (P.L. 99-272; 100 STAT. 164; 42 UNITED STATES CODE SECTION 1395DD).

2. UNSCHEDULED MEDICAL SERVICES THAT ARE DEEMED NECESSARY TO TREAT AN IMMEDIATE THREAT TO THE LIFE OR HEALTH OF A PATIENT.

3. MEDICAL SERVICES THAT ARE PROVIDED DURING OR AS A RESULT OF A DISASTER.

Sec. 2. Section 32-1473, Arizona Revised Statutes, is transferred and renumbered for placement in title 12, chapter 5.1, article 1, as section 12-573 and, as so renumbered, is amended to read:

12-573. Limited liability for treatment related to delivery of infants; exception; definition

A. Unless the elements of proof contained in section 12-563 are established by clear and convincing evidence, a physician licensed to practice pursuant to ~~this chapter or~~ TITLE 32, chapter 13 OR 17 ~~of this title~~ is not liable to the pregnant female patient, the child or children delivered, or their families for medical malpractice related to labor or delivery rendered on an emergency basis if the patient was not previously treated for the pregnancy by the physician, by a physician in a group practice with the physician or by a physician, physician assistant or nurse midwife with whom the physician has an agreement to attend the labor and delivery of the patient.

B. Unless the elements of proof contained in section 12-563 are established regarding the acts or omissions of a licensed health care facility or its employees in cases THAT ARE covered by ~~the provisions of~~ subsection A of this section by clear and convincing evidence, the health care facility is not liable to the female patient, the child or children

1 delivered or their families for medical malpractice related to labor or
2 delivery.

3 C. This section does not apply to treatment THAT IS rendered in
4 connection with labor and delivery if the patient has been seen regularly by
5 or under the direction of a licensed health care provider or a licensed
6 physician from whom the patient's medical information is reasonably
7 IMMEDIATELY available to the physicians attending the patient during labor
8 and delivery.

9 D. For the purpose PURPOSES of this section, "emergency" means when
10 labor has begun or a condition exists requiring the delivery of the child or
11 children.